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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/421,713	10/20/1999	LARRY A. WINTER	8567.72US01	4525

23552 7590 08/21/2003

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MINNEAPOLIS, MN 55402-0903

EXAMINER
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ABDI, KAMBIZ

ART UNIT	PAPER NUMBER
3621	

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b> 09/421,713	<b>Applicant(s)</b> WINTER ET AL.
	<b>Examiner</b> Kambiz Abdi	<b>Art Unit</b> 3621
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b>		
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>		
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>07 January 2003</u> .		
2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b> .      2b) <input type="checkbox"/> This action is non-final.		
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.		
<b>Disposition of Claims</b>		
4) <input checked="" type="checkbox"/> Claim(s) <u>1-41</u> is/are pending in the application.		
4a) Of the above claim(s) _____ is/are withdrawn from consideration.		
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.		
6) <input checked="" type="checkbox"/> Claim(s) <u>1-41</u> is/are rejected.		
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.		
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b>		
9) <input type="checkbox"/> The specification is objected to by the Examiner.		
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.		
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).		
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner.		
If approved, corrected drawings are required in reply to this Office action.		
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).		
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of:		
1. <input type="checkbox"/> Certified copies of the priority documents have been received.		
2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.		
3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).		
* See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).		
a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.		
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.		
<b>Attachment(s)</b>		
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____		
4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____		
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		
6) <input type="checkbox"/> Other: _____		

#### **DETAILED ACTION**

1. The prior office action is incorporated herein by reference. In particular, the observations with respect to claim language, and response to presented arguments.
  - Claims 1-4, 22, 25-27, and 35-41 are amended.
  - Claims 1-41 are pending.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Amended independent claims 1, 27, 35, 40, and 41 contain the phrase "a marginal value..." examiner has reviewed the specification to see if the applicant has described the disclosed invention.

4. Applicant's specification fails to recite/define the steps leading to disclosure of how "a marginal value..." as it is intended in the claim language has been achieved. Therefore, independent claims 1, 27, 35, 40, and 41 are rejected. Additionally dependent claims 2-26 and 36-39 are rejected based on being dependent on rejected independent claims.

#### ***Response to Amendment***

5. Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

6. Although it is necessary to examine the amended claims based on the original specification, it is clearly disclosed by Johnson that a clearing price is calculated for market services that is equal for all market services consumers, Johnson calls it "clearing price" (See Johnson column 4, lines 14-60) that are

equal for all the consumers. It is clear by Johnson's discloser that this practice is a well-known practice in the energy industry biding for the suppliers and price setting for the consumer. The rejection of claims has been maintained based on office action mailed to the applicant on 13 March 2002,

7. Therefore, the argument put forward by the applicant is moot.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,343,277 to John Gaus et al. over U.S. Patent No. 6,047,274 to Jack J. Johnson et al.

10. As for claims 1-26, 40, and 41, Gaus teaches all of the claimed elements representing utilization of computer system based energy market place. Gaus teaches utilization of graphical interface, Internet as a method of communication. The roles and responsibilities of a moderator within an online energy auction market for energy market with well established steps of collecting bids from all sides, establishing a clearing price, creating and collecting information for settling the transaction, information such as usage from the end users, and collecting contract information, to finalize a transaction between providers of energy and customers (see Gaus figures 1- 3, 5, 7, 11-14, 16-18, 22, also see column 3, lines 13-64, column 4, lines 22-68, column 5, lines 1-68, and column 6, lines 1-68). What Gaus does not explicitly teach are, details on meter reading and billing process. However, Johnson clearly discloses the system and methods of collecting meter reading at the end user (see Johnson abstract, figures 1, 4, 6, 7, 10-16, column 4, lines 14-60, column 2, lines 22-57, column 7, lines 15-24, column 8, lines 61-63, column 16, lines 1-13). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components together in one system. As one can see utilization of a

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common marketplace which will help the energy providers, energy traders, and end users to benefit from efficient transaction amongst these entities. To provide such an environment it would be obvious how it can benefit to bring all the components of conducting business as such in one environment seamless to the users to expedite the entire transaction. Therefore it the reduction of the cost of conducting an energy marketplace and mediating such a marketplace.

11. As for claims 27-39, Gaus teaches all of the claimed elements disclosed in the claims mentioned here (see Gaus figures 1- 3, 5, 7- 9, 14-18, and 20-22) except Gaus does not explicitly refer to the metering and bill components. Also, Gaus does not explicitly teach the power generation and how the system disclosed will effect power generation. However, Johnson does explicitly teach the elements of metering and billing (see Johnson figures 4, 6, 10, 15, 16, column 3, lines 2-16, column 4, lines 33-40, column 7, lines 15-29, column 8, lines 61-63, column 9, lines 55-59, column 10, lines 18-22, and column 16, lines 1-13) as well as disclosing the adjustment of power availability by providers based on end users' actual usage data available to them through the disclosed system (see Johnson column 7, lines 15-51). Johnson further teaches that by implementing direct metering and integrating settlement and billing components, it will expedite the speed of transactions and ease of conducting business once all the necessary information and data are aggregated through one system, making the process from the start (i.e. bidding) to the end (i.e. payment) taking place in one seamless operation. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components together in one system for the motivation stated above.

### ***Conclusion***

12. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

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13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Abdi whose telephone number is (703) 305-3364. The examiner can normally be reached on 9:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (703) 305-9768.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks  
Washington D.C. 20231**

or faxed to:

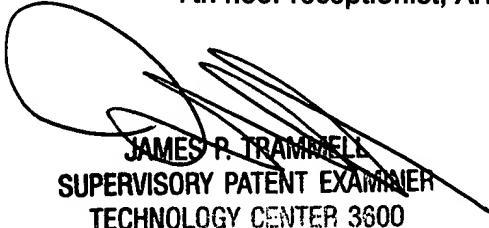
(703) 872-9306 [Official communications; including After Final communications labeled "Box AF"]

(703) 746-7749 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to:

**Crystal Park 5, 2451 Crystal Drive  
7th floor receptionist, Arlington, VA, 22202**

**Abdi/K**  
August 14, 2003

  
**JAMES P. TRAMMELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600**